

REMARKS

The Office Action dated May 15, 2007 has been received and reviewed. This response, submitted along with a Request for Continued Examination (RCE) and a Petition for a Three-Month Extension of Time, is directed to that action.

Claims 1 and 2 have been amended. Support for the amendment can be found implicitly throughout the specification, in paragraph [0054] of the published application US 2006/0140901 A1 and in Figures 2-6. No new matter has been added.

The applicants respectfully request reconsideration based on the foregoing amendments and the following remarks.

Claim Rejections- 35 U.S.C. §103

The Examiner rejected claims 1-21 under 35 U.S.C. §103(a) as obvious over Lindauer (US 5,139,864) in view of Benko et al. (US 2003/0091466). The applicants respectfully traverse this rejection.

The presently claimed invention now requires that the third phase be immiscible with both the first and second phases. The third phase is a separate and discrete phase within the claimed articles which contributes greatly to maintaining the necessary barrier between the first and second phases, thereby permitting greater control of the vaporization release rates of the article. The immiscible third phase works in conjunction with the partition wall (claim 1) or the “limbs” (claim 2) to provide suitable vaporization characteristics depending on its preferred usage.

Contrarily, Lindauer teaches that mixing occurs between what the Examiner deems the first and third phases. Referring to Figures 11 and 12 of Lindauer, the first phase (107) is mixed within the third phase (101). Moreover, while the present invention requires that the first and second phases be liquid or gel, Lindauer, in the embodiment cited by the Examiner, teaches that the first phase is comprised of “particles”, which are solids. (col. 9, lines 33-34).

Furthermore, Benko merely teaches a layered article in which the first phase layer and the second phase layer are adjacent to each other and have a sealant layer attached to the remote sides of said layers. There is no barrier between the first phase and the second phase.

Additionally, while the first phase can be liquid, gel or a combination of the two, the second phase must be a gel or a solid. There is nothing further in this reference that would lead a skilled artisan to modify Lindauer to achieve the present invention.

The differences between the presently claimed invention and Lindauer in view of Benko, as described herein, are discernable and significant. There is clearly no suggestion in Lindauer to the skilled artisan to modify the third phase such that it is immiscible from the first and second phases, nor is there any suggestion to modify the construction of the article to control vaporization rates. Simply put, the differences between the presently claimed invention and the prior art are outside the reach of any design driven adaptations.

The differences between the presently claimed invention and Lindauer are too great to be considered “obvious” because they drastically modify the functionality of the device. Lindauer’s device is unable to control vaporization release rates such as in the present invention. Indeed, Lindauer merely teaches randomized scattering of the first phase particles within the third phase, wherein one or both will evaporate at a random time interval depending on which of these phases are exposed to the air during evaporation. The second phase also evaporates on a random basis once the mixed first and third phases have randomly evaporated sufficiently to expose the second phase to the air. The present invention, on the other hand, is able to control the vaporization release rates, due to the immiscible third phase and the partition wall or “limbs”. Indeed, they are inventive improvements that were completely unrecognized by the prior art.

Based on the foregoing, the applicants submit that a *prima facie* case of obviousness cannot be established, and respectfully request that the Examiner withdraw the rejections. Accordingly, the applicants believe the claims are now in condition for allowance, and such favorable action is respectfully requested.

If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant’s attorney at the phone number listed below.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,
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